

No. 24-6813

IN THE SUPREME COURT OF THE UNITED STATES

FREDDY CASTRO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 13-15) that 18 U.S.C. 922(g)(1), the federal statute that prohibits a person from possessing a firearm if he has been convicted of “a crime punishable by imprisonment for a term exceeding one year,” ibid., violates the Second Amendment on its face. See Pet. 13 (“facial conflict between the statute” and the Constitution); Pet. App. A8 (“unconstitutional on its face”). For the reasons set out in the government’s brief in opposition in French v. United States, No. 24-6623 (filed Apr. 11, 2025), that contention does not warrant this Court’s review. As the government explained in French, the

claim that Section 922(g)(1) violates the Second Amendment on its face plainly lacks merit, and every court of appeals to consider the issue since United States v. Rahimi, 602 U.S. 680 (2024), has determined that the statute has at least some valid applications. For example, the statute is constitutional as applied to petitioner, who has multiple previous felony convictions for crimes such as burglary and aggravated assault with a deadly weapon, who was on parole at the time of the offense here, who stole the firearm at issue, and who used the firearm to threaten his girlfriend during a domestic altercation. See Pet. App. A2-A3; Gov't C.A. Br. 2-3, 5.

Petitioner separately contends (Pet. 6-12) that the fact that a firearm "crossed state lines at [some] time in the indefinite past," Pet. i, does not satisfy Section 922(g)'s jurisdictional element, which requires proof that the defendant possessed a firearm "in or affecting commerce," 18 U.S.C. 922(g). He also argues (Pet. 6-12) that, if Section 922(g) were construed to cover his conduct, it would exceed Congress's authority under the Commerce Clause. See U.S. Const. Art. I, § 8, Cl. 3. But interpreting a similarly worded predecessor felon-in-possession statute, this Court determined that "proof that the possessed firearm previously traveled in interstate commerce is sufficient to satisfy the [jurisdictional element]." Scarborough v. United States, 431 U.S. 563, 564 (1977); see United States v. Bass, 404 U.S. 336, 350 (1971) ("[T]he Government meets its burden here if

it demonstrates that the firearm received has previously traveled in interstate commerce.”). The courts of appeals have uniformly interpreted Section 922(g) the same way and have consistently upheld that reading against constitutional challenges. See, e.g., United States v. Singletary, 268 F.3d 196, 205 (3d Cir. 2001) (collecting cases), cert. denied, 535 U.S. 976 (2002).

Petitioner, moreover, did not simply possess a firearm that crossed state lines at some point in the past; he stole a firearm and ammunition from someone else. See Pet. App. A2. Petitioner’s conduct satisfies Section 922(g)’s jurisdictional element and falls well within Congress’s regulatory authority under the Commerce Clause. Cf. Taylor v. United States, 579 U.S. 301, 303 (2016) (“intrastate drug theft” satisfies commerce element of the Hobbs Act, 18 U.S.C. 1951(a), and falls within Congress’s Commerce Clause authority) (emphasis omitted).

In all events, this case would be an unsuitable vehicle to consider petitioner’s contention. Although petitioner argued in district court Section 922(g)(1) exceeds Congress’s enumerated powers, see D. Ct. Doc. 17, at 2-5 (Oct. 23, 2023), he now insists that he “did not challenge the constitutionality of the statute in district court” and that “[t]his probably presents an insurmountable vehicle problem,” Pet. 12 (emphasis added). Cf. Pet. App. A8 (noting petitioner’s similar insistence that he had forfeited his Second Amendment claim but concluding that he had preserved it).

The petition for a writ of certiorari should be denied.*

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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* A copy of the government's brief in opposition in French is being served on petitioner. The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.